

ZONING BOARD OF ADJUSTMENT

DRAFT - Minutes of July 19, 2011

ATTENDEES: Robert Rowe, Vice – Chairman, Carl Miller, Jamie Ramsay, Wil Sullivan, Alternate, Jim Quinn, Alternate, and Charlie Tiedemann – Planning Director

Robert Rowe, Vice Chairman, called the meeting to order at 7:04 p.m. Robert Rowe explained the appeals process indicating that a re-hearing may be requested up to 30 days after a decision is made. Robert Rowe introduced the members of the ZBA and explained he is taking on the role of Chairman in Doug Kirkwood's absence.

Untable: Case 1459: Lot 4-137-9 Chandler Lane: *Variance* – Anthony R. Joyce and Susan M. Joyce, 8 Chandler Lane, Amherst, NH 03031 (owners), requests a Variance to construct a swimming pool that will be 25.8 feet more or less (side setback) and 21.8 feet more or less (rear setback) from a self imposed condition, at the time of approval of the subdivision of these lots, to conform to the existing covenants which included a thirty-five (35) foot building setback from the side and rear of the lots. Residential / Rural Zone

Carl Miller moved to un-table this application. Jamie Ramsay seconded. All were in favor.

This case was previously heard but it did not meet the private setbacks for the covenants in the development, it was tabled until such time as information could be identified. A Building Permit has been issued therefore this application is mute. Carl Miller stated that he was not present for the application presentation and therefore does not understand the resolution. Robert Rowe explained that the application was tabled in order to get information from Town Counsel; however a Building Permit has been issued, so the application is no longer needed. The resolution was swift. Robert Rowe explained that Town Counsel had not responded to the request, therefore the Permit was issued.

Case 1461: Lot 7-83-10 Boston Post Road: *Variance* – Archie S. Mobley, III, and Kim-ly M. Mobley, 26 Boston Post Road, Amherst, NH 03031 (owners), request a Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.12 Watershed Protection District, Subsec. 4.12.1.2 Regulations. In order to construct a shed that will be 53.4 feet more or less from the edge of an intermittent stream (100 feet required). Residential / Rural Zone

Wil Sullivan suggested hearing both the applications together. Robert Rowe responded that the votes would have to be separate. The applicant's representative agreed that the two could be presented together, all members agreed.

Case 1462: Lot 7-83-10 Boston Post Road: *Variance* – Archie S. Mobley, III, and Kim-ly M. Mobley, 26 Boston Post Road, Amherst, NH 03031 (owners), request a

47 Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.11
48 Wetland Conservation District, Subsec. 4.11.3 Special Provisions, Para. 4.11.3.3. In order
49 to construct a shed that will be 7.5 feet more or less from the edge of wetlands (50 feet
50 required). Residential / Rural Zone

51
52 Tim Ferwerda, from Meridian Land Services and representing the applicants, handed out
53 larger plans that include topography and elevations. Exhibit A was noted on the larger
54 plans for this application. Photos of the site were also presented and marked Exhibit B
55 and Exhibit C and Exhibit D. Tim presented the proposal for a shed on the north side of
56 the building, the shed will be placed in the existing turn around. The leach field is in
57 front of the house and a steep slope is in the rear of the property which limits the building
58 area. A retaining wall is on the south side of the property, there is no accessible spot on
59 the property other than this area which would not require cutting any vegetation. No
60 excavation work would be required for this proposal.

61
62 Tim began to respond to the questions. Public interest – this request is for 7.5 feet from
63 the wetland and 53.4 feet from the intermittent stream. The use is non-obtrusive, no
64 excavation will be required, it will be placed on blocks, no vegetation is required to be
65 moved. No vehicles will be stored in this area. The shed will not affect the health, safety
66 or welfare of the neighborhood. This will create a storage area outside. Substantial
67 justice – this will be done by granting the Variance to allow the storage to be off the
68 ground. Value of surrounding properties – the surrounding property values will not be
69 diminished. This is consistent with the surrounding properties. Special conditions of the
70 property - this will allow the property to be used in a consistent use. The rear consists of
71 a sloping ledge. A retaining wall and leach field are also present, limiting another
72 location for the shed. The shed is proposed in the most reasonable location on the
73 property.

74
75 Tim presented letters from three abutters in support of this proposal and presented same
76 to the Board. He read the letters which are in support of this proposal. Tim offered to
77 answer any questions.

78
79 Carl Miller noted it appears the house is also in some of the setbacks. Tim agreed.
80 Charlie Tiedemann said the house pre-dates the setbacks. Wil Sullivan asked the square
81 footage of the shed. Tim said the applicant would like 15 x 25 feet. Wil Sullivan was
82 surprised at the size of the shed, noting it is rather large. Tim said there are space issues
83 in the house for tools and toys, this is the shed size the applicant requested. Jim Quinn
84 asked if there is any size restriction on a free standing building such as this. Robert Rowe
85 said the setback requirements are to protect from pollution. The items stored in the shed
86 are of concern; Mr. Rowe asked the applicant what will be stored in the shed and what
87 protections there will be to prevent pollution. Tim suggested by putting the tools in a
88 building such as this, it will be better than the current storage in the elements and on the
89 ground. The equipment will be better off as well as the groundwater. Robert Rowe
90 suggested there could be a condition on the plan for the proper storage of chemicals. Jim
91 Quinn asked if an Occupancy Permit is required for a shed. Charlie Tiedemann answered
92 they generally are not. Robert Rowe said this is residential not commercial. Mr. Mobley

93 said he has rented space in Milford for his business equipment and he would have proper
94 containers for chemicals. Jim Quinn asked why a full foundation is not requested. Mr.
95 Mobley responded that because of the ledge it would not be feasible. Jim Quinn
96 suggested asking for the shed to be on a slab instead of blocks.

97
98 Jamie Ramsay asked Charlie about the shed and does it require a Building Permit?
99 Charlie responded yes, it needs a Building Permit. Mr. Mobley said he would be willing
100 to put it on a slab if that is required.

101
102 Tim Ferwerda said this application was presented to the Amherst Conservation
103 Commission in June and minutes of that meeting were presented, noting they had no
104 issues. Rain guards were requested to mitigate the increased water run off from the roof.
105 Tim noted that the Planning Board determines the stormwater run off. Jim Quinn asked
106 if this applicant previously put on an addition to this property. Mr. Mobley said part of it
107 yes, it was started and the Mobley's finished it. Mr. Mobley noted they do not have a full
108 basement. Tim said the shed is 600 sf. Jamie Ramsay asked how intermittent is the
109 stream? Tim said it is dry right now, and typically runs November to June, it is 1-2 feet
110 wide, but is generally dry July to October. Jamie Ramsay asked if the stream ever
111 reaches the flood stage. Tim said in a 100 year storm, possibly but it wouldn't reach the
112 shed or the house. An 18" culvert carries the stream under the Boston Post Road.

113
114 Jamie Ramsay asked again if the applicant has any issue with building the shed on a
115 concrete slab. Mr. Mobley said he does not.

116
117 There were no further questions from the Board.

118
119 **DELIBERATIONS:**

120
121 *Jamie Ramsay moved to enter into deliberations. Carl Miller seconded. All were in*
122 *favor.*

123
124 Case 1459:

125
126 The subject of this request does not meet the town regulations requiring a vote, the
127 Building Permit was granted therefore a vote is not required.

128
129 *Jamie Ramsay moved as such and Wil Sullivan seconded. All were in favor.*

130
131 Case 1461:

132
133 *Jamie Ramsay moved no regional impact. Carl Miller seconded. All were in favor.*

134
135 II. Conclusions [RSA 674:33, I (b)]:
136

1. The Variance will not be contrary to the public interest.
Carl Miller - not true, it serves to minimize the clutter on this lot and is out of sight it is in the public interest to add the shed

True: 4, Not True: 1

2. The Variance is consistent with the spirit and intent of the Ordinance.
Jamie Ramsay - it is in the public interest and will minimize the impact, otherwise it is for storage of equipment and will benefit others; Wil Sullivan is concerned about the size (of the shed) but not concerned about pollution; Jim Quinn suggested it seems out of proportion and he is concerned about pollution - the size of the shed is large; Carl Miller noted that it makes sense for the storage since there is no basement, it seems justified and if were smaller it wouldn't really matter

True: 4, Not True: 1

3. Substantial justice is done.
Wil Sullivan sees no problem with the public; Jim Quinn, Carl Miller, and Jamie Ramsay also agree

True: 5, Not True: 0

4. The values of surrounding properties will not be diminished.
Jim Quinn - the neighbors do not object to this; Carl Miller does not think it will affect the property values

True: 5, Not True: 0

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(Apply tests under A or B below)

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and

(2) The proposed use is a reasonable one.

Carl Miller, Jamie Ramsay agreed; Wil Sullivan - there is a lot of ledge and no where for this shed to be put; Jim Quinn agreed

True: 5. Not True: 0

B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it. True: ____, Not True: ____

Carl Miller does not think a slab should be required; Wil Sullivan feels if this goes before the Planning Board, it may be better for drainage to keep it on blocks; Jamie Ramsay said the slab would provide protection from spills; Charlie Tiedemann said if it is on a slab it would require a WRMP and if it's on blocks it would not.

The application is approved with no conditions.

Case 1462:

Jamie Ramsay moved no regional impact. Carl Miller seconded. All were in favor.

II. Conclusions [RSA 674:33, I (b)]:

1. The Variance will not be contrary to the public interest.

Carl Miller - this is an addition to the property and will improve the living conditions.

True: 5, Not True: 0

2. The Variance is consistent with the spirit and intent of the Ordinance.

Jamie Ramsey - it is not contrary to the spirit of the ordinance.

True: 5, Not True: 0

3. Substantial justice is done.

Wil Sullivan - it is not contrary to the spirit of the ordinance

True: 5, Not True: 0

4. The values of surrounding properties will not be diminished.

Jim Quinn - it is not contrary to the spirit of the ordinance

True: 5, Not True: 0

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(Apply tests under A or B below)

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and

(2) The proposed use is a reasonable one. True: 5.

Not True: 0

B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in

229 strict conformance with the Ordinance, and a Variance is therefore necessary to enable a
230 reasonable use of it. True: ____, Not True: ____

231
232 This request is granted with no conditions.

233
234 *Jamie Ramsay moved to come out of deliberations. Carl Miller seconded. All were in*
235 *favor.*

236
237 **Old Business:** Minutes of May 17, and June 14, 2011

238
239 Minutes were held until the following meeting.

240
241 The following items were held for the next meeting.

242
243 **New Business:** 1. Election of Officers of the Zoning Board of Adjustment
244 2. Discussion of appointment of alternates to the ZBA

245
246 *Jamie Ramsay moved to adjourn at 8:02 p.m. Carl Miller seconded. All were in favor.*

247
248 Respectfully submitted,

249
250
251 Darlene J. Bouffard
252 Recording Secretary